MONTANA LEGISLATIVE HISTORY

Chapter 474 1975

Bill H 42 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) Feb 12 ✓ C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) Mar 28 C

_____ C

_____ C

_____ C

BEST COPY AVAILABLE

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

BILL NO. 412

INTRODUCED BY Helen Fuennelsen VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE SCOPE OF THE OPEN MEETINGS LAW; AMENDING SECTIONS 82-3402 AND 94-7-401, R.C.M. 1947; REPEALING SECTION 75-6127, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-3402, R.C.M. 1947, is amended to read as follows:

"82-3402. Meetings of public agencies to be open to public--exceptions. All meetings of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organization or agencies supported in whole or in part by public funds, or expending public funds, at which any action is taken by such public governmental body, board, bureau, commission or agency of the state or any political subdivision of the state shall be open to the public~~,~~. ~~except--as-otherwise-specifically-provided-by-law-and-except any-meeting-involving-or-affecting,~~ Provided, however, the presiding officer of any meeting may close the meeting during the time any of the following items are discussed, if, and only if, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure.

~~(1)-National-or-state-security,~~

~~(2)~~ (1) The disciplining of any public officer or employee, or any hearing on, or of, a complaint against a public officer or employee, unless the public officer or employee requests an open meeting.

~~(3)~~ (2) The employment, appointment, promotion, dismissal, demotion or resignation of any public officer or employee, unless the public officer or employee requests an open meeting.

~~(4)-The-purchasing-of-public-property,-the-investing-of public--funds--or--other--matters--involving--competition-or bargaining-which,-if-made-public-may--adversely--affect--the public--security--or--financial-interest-of-the-state-or-any political-subdivision-or-agency-of-the-state,~~

~~(5)~~ (3) The revocation of a license of any person licensed under the laws of the state or any political subdivision of the state, unless the person licensed requests an open meeting.

(6) Law enforcement, crime prevention, probation or parole."

Section 2. Section 94-7-401, R.C.M. 1947, is amended to read as follows:

"94-7-401. Official misconduct. (1) A public servant

commits the offense of official misconduct when, in his official capacity, he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction; or

(b) knowingly performs an act in his official capacity which he knows is forbidden by law; or

(c) with the purpose to obtain advantage for himself or another, he performs an act in excess of his lawful authority; or

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or

(e) conducts a meeting of a public agency in violation of section 82-3402.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section, and any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) shall be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all back pay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal."

Section 3. Section 75-6127, R.C.M. 1947, is repealed.

-End-

JUDICIARY COMMITTEE

February 12, 1975

The twenty-eighth meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Wednesday, February 12, 1975, at 9:00 AM. Representative James Moore, Vice-Chairman, presided. All members were present except Representative Huennekens, absent, excused.

Bills scheduled for hearing this date were House Bills Nos. 375, 412, 372 and 376, taken in this order.

HOUSE BILL NO. 375 Representative Steve Helmbrecht, District #8, chief sponsor, stated this measure, which abolishes miscellaneous fees for justices of the peace, came into being because of a problem with reporting of miscellaneous fee by justices of the peace. The problem is many justices charge different fees for different offenses. There was a case pertaining to this in March of 1974 of Montana vs. U.S.

Proponent Dave Fox, representing PERS, urged support of this measure. Proponent John Bell, representing the Clerks and Recorders, stated this bill is unique, it removes some workload from the county officials. He stated the two justices of the peace in his county favor this approach.

There were no other proponents and no opponents. There were no questions from committee members so the hearing was closed.

HOUSE BILL NO. 412 Representative Meloy, District #29, chief sponsor of this measure to extend the scope of the open meetings law, stated we are talking about sunshine. This bill is an attempt to conform existing open meeting laws to th new Constitution. With this bill all meetings shall be open unless there is a question of individual privacy and it clearly exceeds th merits of public disclosure. There are two statutes on the books that are included in the bill. On page 2, subsections (1) and (4) do not relate to individual privacy and feels these are clearly unconstitutional. On page 1, lines 22 through 25 give provisions for when a meeting may be closed.

Proponent George Remington, representing the Montana Press Association and the Independent Record, stated this bill amends the Montana 1963 open meeting law to put it in compliance with the new Constitution. It puts teeth into the law, gives penalties. Some public officials have relented when it was pointed out to them, but knowing there was no penalty some have thumbed their noses without threat of penalties. (See prepared statement).

BEST COPY
AVAILABLE

Proponent Sam Gilluly, representing the ɔntana Press Association, testified in favor of the bill (see repared statement).

Representative Meloy stated that Larry Lowry, ublisher of the Big Timber Pioneer, has a statement coming. He s having a problem with closed school board meetings in his area. ithout objection, Representative Meloy would like to pass the tatement around to committee members when it comes.

There were no other proponents and no pponents. Representative Meloy, in closing, stated that two years go Senator Greely introduced a bill which would have gone much urther in open meetings. This bill passed the House but died in he Senate. He has attempted here to use the existing open meeting aw to make it conform to the Constitution. He urged a DO PASS.

Representative Day questioned whether epresentative Meloy considered the stricken material unconstitutional o which the answer was yes, because it does not relate to individual rivacy. In answer to Representative Moore, Representative Meloy tated this bill would permit the press or public to attend a meeting nd then afterwards have some basis to inquire why someone said what hey said. This bill could be used to try to get to those decisions ade in private and rubber-stamped in committee. In answer to a uestion by Representative Halvorson, Mr. Remington replied that e thinks this bill will satisfy the press in Montana. He stated e hopes the press never gives up its watchdog role, however.

Following additional discussion, the earing was closed.

OUSE BILL NO. 372 Representative Dan Yardley, District #74, chief sponsor, stated this bill involves joint enancies and similar types of estates. The Legislature in 1974 nacted the Probate Act. The Montana Bar Association helped work ut the Probate Code and get it introduced. The Joint Judiciary ommittee was very concerned with the way joint tenancy was covered n the Uniform Probate Code, the Bar Association felt the same ay. This bill deals with types of problems that automatically ass to a survivor and simplifies the law that applies to the spouse. e explained the sections of the bill. This bill does not require ny court action to terminate joint tenancy. No attorney is required o do this. The Inheritance Division of the Department of Revenue as two sections they would like to add by amendment (see exhibit).

BEST COPY
AVAILABLE

To: Judiciary Committee, Montana House of Representatives

Re: House Bill 412.

Statement by: George D. Remington, Publisher, The Independent Record, Helena, Montana. February 12, 1975.

I am appearing in support of House Bill 412 as the publisher of a daily newspaper and as a member of the Freedom of Information Committee of the Montana Press Association.

House Bill 412 amends Montana's 1963 open meeting law to put it in compliance with a new constitutional provision that attempts to reconcile the people's right to know with their right of privacy.

In addition, it puts some teeth into the law by providing penalties for public officials who violate it.

In the past, without penalties, the law has worked well some times and in some places, and poorly at other times and places. We have found that some officials have relented when the law was called to their attention or when it was pointed out in news stories and editorials that they had violated it by having closed meetings. They felt the pressure of public opinion.

On the other hand, knowing there was no penalty, some officials have thumbed their nose at both the law and public opinion and have continued to conduct public business behind closed doors and at clandestine meetings.

I believe the language in the Bill of Rights of the new constitution makes it necessary now to impose the penalties contained in House Bill 412---a fine or imprisonment and suspension or removal from office.

The Right to Know provision in the constitution is subject to severe abuse by public officials who are bent upon conducting public business in secrecy. They are given discretion in determining whether---in the words of the constitution---"the demand for individual privacy clearly exceeds the merits of public disclosure."

BEST COPY AVAILABLE

of a daily newspaper and as a member of the Freedom of Info... Committee of the Montana Press Association.

House Bill 412 amends Montana's 1963 open meeting law to ... it in compliance with a new constitutional provision that ... to reconcile the people's right to know with their right of ...

In addition, it puts some teeth into the law by providing penalties for public officials who violate it.

In the past, without penalties, the law has worked well ... times and in some places, and poorly at other times and ... have found that some officials have relented when the law was ... to their attention or when it was pointed out in news stories and editorials that they had violated it by having closed meetings. They felt the pressure of public opinion.

On the other hand, knowing there was no penalty, some officials have thumbed their nose at both the law and public opinion and ... continued to conduct public business behind closed doors ... at clandestine meetings.

I believe the language in the Bill of Rights of the new constitution makes it necessary now to impose the penalties contained in House Bill 412----a fine or imprisonment and suspension or ... from office.

The Right to Know provision in the constitution is subject to severe abuse by public officials who are bent upon conducting public business in secrecy. They are given discretion in determining whether----in the words of the constitution----"the demand for individual privacy clearly exceed the merits of public disclosure."

With that kind of power at the discretion of public officials it is only reasonable that they face a penalty for abusing that power.

I am sure this committee will hear plenty of opposition to the provision in this bill repealing Section 75-6127 of the Revised Codes of Montana, 1947, regarding negotiations between school boards and teachers.

I hope you will consider that taxpayers' money is at stake in those negotiations. Most of our tax money goes to support education, and salaries and fringe benefits make up a major portion of any educational budget.

I hope you will consider, too, that demands by both sides in these negotiations are likely to be much more reasonable if the bargaining sessions are open to public scrutiny.

And I hope you will consider that it is better for the public to be informed about these negotiations firsthand rather than through often-inflammatory propaganda statements by one side or the other---or both sides.

House Bill 412 is a vital piece of legislation in carrying out the constitutional mandate for more open government. I trust you will act upon it favorably.

BEST COPY AVAILABLE

MONTANA PRESS ASSOCIATION
or
Montana Advertising Service, Inc.
P.O. Box 1186, Helena, Mont. 59601

BEST COPY
AVAILABLE

STATEMENT IN SUPPORT OF HB 412
House Judiciary Committee, February 12

Mr. Chairman and Members of the Committee:

My name is Sam Gilluly and I represent the Montana Press Association, an org of 87 daily, weekly and semi-weekly newspapers in Montana.

Open meeting laws, sometimes called "Sunshine" laws, are in effect in a majo the states. Some are very comprehensive. HB 412 is aimed to amend the Montana law line with the right-to-know provisions of the 1972 Constitution. At the same time must be balanced with the right-to-privacy clause in the same Constitution.

While the public doesn't always hear about it, we of the press are aware of efforts to bring more news of government to the people of Montana and frequent ef to cover up the news. This "battle"--and I use the word advisedly--isn't fought o at state level. A prime example did occur just last week when the Board of Regent a secret meeting in Great Falls. I should say that many public officials do not t hamper the press. But here and there--at State, county, municpal and school distr level--the press does encounter opposition. There are always some public official not understand that their business is public and that they are spending public do I could cite you examples within the last few months at various levels of governm

As a former administrator of a state agency, I have seen both sides of this I feel there are occasions, particularly having to do with personnel, where an individual's right of privacy overbalances the public good. The bill does not dis this right. As a state employe, at times I was subject to some inspection by the and some very searching questions. My feeling about that was that when a public takes public money he has an obligation to be open with the press and with every

Montana Newspaper Service, Inc.
P.O. Box 1186, Helena, Mont. 59601

TATEMENT IN SUPPORT OF HB 412
ouse Judiciary Committee, February 12

r. Chairman and Members of the Committee:

My name is Sam Gilluly and I represent the Montana Press Association, an organi
f 87 daily, weekly and semi-weekly newspapers in Montana.

Open meeting laws, sometimes called "Sunshine" laws, are in effect in a majorit
he states. Some are very comprehensive. HB 412 is aimed to amend the Montana law in
ine with the right-to-know provisions of the 1972 Constitution. At the same time, t
ust be balanced with the right-to-privacy clause in the same Constitution.

While the public doesn't always hear about it, we of the press are aware of con
fforts to bring more news of government to the people of Montana and frequent effor
o cover up the news. This "battle"--and I use the word advisedly--isn't fought out
t state level. A prime example did occur just last week when the Board of Regents h
secret meeting in Great Falls. I should say that many public officials do not try
amper the press. But here and there--at State, county, municpal and school district
evel--the press does encounter opposition. There are always some public officials w
ot understand that their business is public and that they are spending public dolla
I could cite you examples within the last few months at various levels of government

As a former administrator of a state agency, I have seen both sides of this mat
I feel there are occasions, particularly having to do with personnel, where an
individual's right of privacy overbalances the public good. The bill does not distur
his right. As a state employe, at times I was subject to some inspection by the pre
nd some very searching questions. My feeling about that was that when a public offi
akes public money he has an obligation to be open with the press and with every cit
his bill enforces that obligation. I hope you will recommend it for passage.

BEST COPY
AVAILABLE

HOUSE BILL NO. 376 Representative Lory moved DO NOT PASS. Representative Lory stated the bill goes to great length to enumerate rights that are already there. Representative Meloy stated that this method to take care of the problem won't reall work. Representative Day stated he feels this bill gives a juvenile right to tell his parents to go to hell. Representative Halvorson stated we should have a bill to spell out the rights of parents.

Representative Meloy stated an even more serious problem in section 7 would be giving him essentially the same rights as an adult with regard to due process and the whole argument on givi rights to a juvenile because there are some responsibilities that go along with this.

Motion DO NOT PASS carried with Representative Huennekens voting no.

HOUSE BILL NO. 412 Representative Halvorson moved DO PASS. Representative Meloy stated that the open meetings laws are being abused.

Representative Hager questioned why the stricker lines on page 2 and Representative Meloy answered that the constituti states when you can close a meeting, the existing open meeting law states you can do those things but the constitution changed the two stricken out. We have a very special provision in our constitition that isn't in any other constitution as far as he knows.

The motion DO PASS carried with Representatives Hager and Anderson voting no.

Motion to adjourn carried.

Herb Huennekens

REPRESENTATIVE HERB HUENNEKENS
CHAIRMAN

HH:pb

BEST COPY AVAILABLE

linked with effective and inexpensive remedies. Americans, he said, cannot take advantage of the court system because of the lack of time and money, two problems which small claims courts can mitigate. He stated that the committee should give scrutiny in the bill to 1) collection of judgements, 2) the danger of easy transfer to district courts, 3) the possibility of providing for an explanatory manual without technical language for citizens to use.

Senate 318

Rep. Robert Harper, District 88, stated that the bill would provide redress for consumers for claims for $10.00 to $350.00. He stated that neither party can hire a lawyer for the small claims court, and that the court would fairly consider the interests of both consumers and merchants.

Rep. Richards stated that Rep. Roberto Federico had asked him to communicate to the committee his (Rep. Federico's) strong support.

Michael Pichette of the Democratic Party stated that the party supported the small claims courts.

Winn Dowlin, Justice of the Peace in Yellowstone County stated that he supported the small claims court concept but could not support HB 528 as written. He pointed out that individuals can file their own cases in justice courts now. He stated that he was worried about the fact that the proposed small claims courts could be abolished so easily. In conclusion, he said that he felt justice courts could be made to do the same things as the small claims courts.

Rep. Richards stated in closing that there would be no need for duplication of facilities if the bill were enacted. He added that he would not mind if section 3 of the bill, regarding duration of the small claims court, were amended. He said that one of the bill's strong points was the fact that district court judges would be able to appoint small claims court judges on a part-time basis and small claims courts would have good lawyers on their benches as a result.

There were no further proponents and no opponents to the bill.

HB 412, sponsored by Representative Mike Meloy of District 29, was heard next. He stated that the purpose of the bill was to conform 82-3402, R.C.M. 1947, the open meetings law,

BEST COPY AVAILABLE

to the requirements of the new Constitution. Unless the right of individual privacy clearly exceeds the merit of public disclosure at meetings of any state agency or official body, he said, such meetings would be required to be open to the public. The determination would be made by the presiding officer. He stated that closed public meetings violating the requirements of the proposed amended open meetings law would amount to official misconduct under 94-7-401, R.C.M. 1947, with the penalties provided therefor.

Sam Gilluly, Managing Secretary of the Montana Press Assn., stated that most states have open meetings laws that are stronger than this. He added that normally the press has no difficulties with public officials, but he felt that there are occasions when closed public meetings are warranted. He presented written testimony (attached) and submitted written testimony in support of the bill from Mr. George Remington, publisher of the Helena Independent Record (attached).

Michael Pichette, Executive Secretary of the Montana Democratic Party, stated that he strongly supported the right of citizens to know what goes on at meetings of governmental bodies and added that the bill will help to implement the right to know language of the Montana Constitution.

There were no further proponents and no opponents to the bill.

g no further business, the Committee adjourned until later , at which time an Executive Session was scheduled.

Thomas E. Towe, Chairman

BEST COPY
AVAILABLE

MONTANA PRESS ASSOCIATION
or
Montana Advertising Service, Inc.
P.O. Box 1186, Helena, Mt. 59601

STATEMENT IN SUPPORT OF HB 412

Senate Judiciary Committee, March 18, 1975

Mr. Chairman and Members of the Committee:

My name is Sam Gilluly and I represent the Montana Press Association of 86 daily, weekly and semi-weekly newspapers in Montana.

Open meeting laws, sometimes called "Sunshine" laws, are in effect i the states. Some are very comprehensive. HB 412 is aimed to amend the Mon with the right-to-know provisions of the 1972 Constitution. At the same t be balanced with the right-to-privacy clause in the same Constitution.

While the public doesn't always hear about it, we of the press are a efforts to bring more news of government to the people of Montana and fre to cover up the news. This "battle"--and I use the word advisedly--isn't at state level. A prime example did occur recently when the Board of Rege secret meeting in Great Falls, I should say that many public officials do hamper the press. But here and there--at State, county, municipal and sch level--the press does encounter opposition. There are always some public not understand that their business is public and that they are spending p I could cite you examples within the last few months at various levels of

As a former administrator of a state agency, I have seen both sides I feel there are occasions, particularly having to do with personnel, wh individual's right of privacy overbalances the public good. The bill does this right. As a state employe, at times I was subject to some inspectio and some very searching questions. My feeling about that is that when a p takes public money he has an obligation to be open with the press and wi This bill enforces that obligation. I hope you will recommend it for pas

BEST COPY AVAILABLE

BEST COPY
AVAILABLE

MONTANA PRESS ASSOCIATION
or
Montana Advertising Service, Inc.
P.O. Box 1186, Helena, Mt. 59601

IB 412

:e, March 18, 1975

of the Committee:

ıly and I represent the Montana Press Association, an organization
semi-weekly newspapers in Montana.

sometimes called "Sunshine" laws, are in effect in a majority of
y comprehensive. HB 412 is aimed to amend the Montana law in line
rovisions of the 1972 Constitution. At the same time, this must
nt-to-privacy clause in the same Constitution.

esn't always hear about it, we of the press are aware of constant
ws of government to the people of Montana and frequent efforts
is "battle"--and I use the word advisedly--isn't fought out alone
example did occur recently when the Board of Regents held a
Falls, I should say that many public officials do not try to
re and there--at State, county, municipal and school district
counter opposition. There are always some public officials who do
r business is public and that they are spending public dollars.
s within the last few months at various levels of government.

trator of a state agency, I have seen both sides of this matter.
ns, particularly having to do with personnel, where an
ivacy overbalances the public good. The bill does not disturb
mployee, at times I was subject to some inspection by the press
questions. My feeling about that is that when a public official
s an obligation to be open with the press and with every citizen.
obligation. I hope you will recommend it for passage.

March 18, 1975

The meeting was called to order by Senator Towe, Chairman, at 7:20 P.M. in Room 442 of the Capitol Building.

With all Committee members present, the Committee considered the following bills:

HB 620	HB 82
HB 412	HB 354
HB 364	HB 372
HB 420	HB 395

HB 620 -- Senator Greely moved HB 620 be concurred in. WITH SENATORS DRAKE AND BROWN VOTING NO AND SENATORS CETRONE AND TURNAGE ABSENT, THE MOTION CARRIED ON A ROLL CALL VOTE.

HB 412 -- Senator Cetrone moved to strike section 3 and amend the title. WITH SENATORS ROBERTS AND GREELY VOTING NO, THE MOTION CARRIED ON A ROLL CALL VOTE.

Senator Greely moved the remaining amendments to HB 412 (See attached Committee Report). THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Greely moved HB 412 be concurred in as amended. WITH SENATORS DRAKE AND TURNAGE VOTING NO, THE MOTION CARRIED ON A ROLL CALL VOTE.

HB 364 -- Senator Greely moved to amend page 3, line 5, strike lines 9-12 on page 3 and insert new material (See attached Committee Report, Amendment #2). THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR CETRONE ABSENT.

Senator Drake moved HB 364 be not concurred in. After a straw vote it was determined the motion would fail, Senator Greely moved HB 364 be reported out of Committee without recommendation as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 420 -- Senator Greely moved to strike page 5, lines 15-17 and strike subsection (4) on page 5. THE MOTION CARRIED

BEST COPY AVAILABLE

3/18 pm.

March 20, 1975

SENATE COMMITTEE ON JUDICIARY

AMENDMENTS TO HOUSE BILL NO. 412

That House Bill No. 412, third reading, be amended as follows:

1. Amend title, lines 6 and 7.
   Following: "1947"
   Strike: "; REPEALING SECTION 75-6127, R.C.M. 1947"

2. Amend page 2, section 1, line 2.
   Following: "disclosure"
   Strike: "."
   Insert: ";"

3. Amend page 2, section 1, line 21.
   Following: line 20
   Strike: "(6)"
   Insert: "(4)"

4. Amend page 3, section 2, lines 14 and 15.
   Following: "agency"
   Strike: "in violation of"
   Insert: "with intent to violate"

5. Amend page 4, section 2, line 2.
   Following: "(3)"
   Strike: "shall"
   Insert: "may"

6. Amend page 4, section 3, line 11.
   Following: line 10
   Strike: Section 3 in its entirety

March 25, 1975

SENATE COMMITTEE OF THE WHOLE

AMENDMENTS TO HOUSE BILL NO. 412

That House Bill No. 412, Senate Committee on Judiciary Amendments, dated March 20, 1975, be amended as follows:

1. Amend amendment No. 2, insertion paragraph, line 1.
   Following: "disclosure"
   Strike: ";"
   Insert ":"

HOUSE BILL NO. 412

INTRODUCED BY MELOY, HUENNEKENS, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE SCOPE OF THE OPEN MEETINGS LAW; AMENDING SECTIONS 82-3402 AND 94-7-401, R.C.M. 1947~~, REPEALING SECTION 75-6127, R.C.M. 1947~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-3402, R.C.M. 1947, is amended to read as follows:

"82-3402. Meetings of public agencies to be open to public--exceptions. All meetings of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organization or agencies supported in whole or in part by public funds, or expending public funds, at which any action is taken by such public governmental body, board, bureau, commission or agency of the state or any political subdivision of the state shall be open to the public~~. except as otherwise specifically provided by law and except any meeting involving or affecting~~, Provided, however, the presiding officer of any meeting may close the meeting during the time any of the following items are discussed, if, and only if, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure~~:~~

~~(1) National or state security.~~

~~(2)~~ (1) The disciplining of any public officer or employee, or any hearing on, or of, a complaint against a public officer or employee, unless the public officer or employee requests an open meeting.

~~(3)~~ (2) The employment, appointment, promotion, dismissal, demotion or resignation of any public officer or employee, unless the public officer or employee requests an open meeting.

~~(4) The purchasing of public property, the investing of public funds or other matters involving competition or bargaining which, if made public may adversely affect the public security or financial interest of the state or any political subdivision or agency of the state.~~

~~(5)~~ (3) The revocation of a license of any person licensed under the laws of the state or any political subdivision of the state, unless the person licensed requests an open meeting.

~~(6)~~ (4) Law enforcement, crime prevention, probation or parole."

Section 2. Section 94-7-401, R.C.M. 1947, is amended to read as follows:

"94-7-401. Official misconduct. (1) A public servant

REFERENCE BILL 4/14/93
Second Printing- Conference Report Included

commits the offense of official misconduct when, in his official capacity, he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction; or

(b) knowingly performs an act in his official capacity which he knows is forbidden by law; or

(c) with the purpose to obtain advantage for himself or another, he performs an act in excess of his lawful authority; or

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law~~,~~; or

(e) KNOWINGLY conducts a meeting of a public agency ~~in violation of~~ ~~WITH INTENT TO VIOLATE~~ IN VIOLATION OF section 82-3402.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section, and any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been

found.

(4) A public servant who has been charged as provided in subsection (3) ~~shall~~ MAY be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all back pay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal."

~~Section 3. Section 75-6127, R.C.M. 1947, is repealed.~~

-End-